IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

RCRev..No. 501 of 2005()

RCA.92/2004 of ADDL. DISTRICT COURT-II, KOZHIKODE
RCP.122/2003 of MUNSIFF COURT, VADAKARA
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REVISION PETITIONER:-

DR.ARAVINDAKSHAN ALIAS ARAVIND,
S/O.LATE BALAKRISHNAN KURUP, S/O.MEENAKSHI AMMA,
AGED 39 YEARS, RESIDING AT PONMERI AMSOM, DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENT:-

VALIYA MADAPPALLI RAJANI,
D/O.KUNHIKANNAN, AGED 53 YEARS,
RESIDING AT CHEEKKUNNUCHALIL, MOKERI AMSOM
DESOM, VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NO.501 of 2005

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Dated this the 9th day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioner is the tenant and respondent is the landlord. The brief facts of the case are the following:

2. The tenant is a doctor by profession. He took the tenanted premises on lease arrangement in 1998. Earlier, the landlord filed a Rent Control Petition under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act. The said petition was compromised on the tenant agreeing to enhance the rent to Rs.600/- per month. After the petitioner took the building on rent, he got married. He was running a clinic there. His wife also joined him in running the clinic. While so, the petitioner got employment in Government service in the year 2000. Later, the petitioner's wife got admission for postgraduate course in Calicut Medical College. She joined the course in 2001 which was completed only in December 2003. While so, the landlord filed the Rent Control Petition in November 2003 on the ground that the building was kept closed for more than six months without any reasonable cause. In the objection filed by the tenant, he

admitted the cessation of occupation, but according to him, the cessation was justified. Since the petitioner took the building on rent, his wife being a member of the family, can also use it. Because she got admission for P.G. Course, the dispensary could not be opened. There is reasonable cause for not opening the premises in terms of Section 11(4)(v) of the Act.

3. Before the Rent Controller, from the side of the landlord Ext.A1 rent deed was produced. From the side of the tenant, Exts.B1 and B2 were marked. As court exhibit, Ext.C1 Commissioner's report was also marked. The petitioner herein who was the respondent in the R.C.P., got himself examined as RW.1. The Rent Controller ordered eviction under Section 11 (4)(v) of the Act. The appellate authority affirmed the same.

4. Learned counsel for the petitioner contended that the cessation of occupation for six months is justified on the facts of the case and therefore the orders of both the authorities are liable to be revised by this court. Going by the materials on record and the findings of the courts below, the only point that arises for decision is whether the cessation of occupation for six months by the tenant was justified or not. This is the only point that was canvassed before us by learned counsel for the petitioner also. According to him, the wife being a family member, is entitled to occupy the building in the possession of her husband. So, the wife's inconvenience, if it is genuine,

will be a reasonable cause for not occupying the room for six months. The authorities below held that the wife's inconvenience cannot be treated as an inconvenience of the husband/tenant. The husband being a Government servant, cannot run a dispensary. So, the said point was found against him concurrently. We notice that the view taken in this regard by the appellate authority is certainly a plausible view on the facts. It is not a case where the tenant had some inconvenience and therefore there was cessation of occupation for six months. The tenant could not have occupied and continued the business of running the dispensary in view of his employment under the Government. Even assuming his wife can continue to occupy the building on behalf of the tenant, her inconvenience cannot be treated as a reasonable cause in terms of Section 11(4)(v) of the Act. So, we feel that the finding of the appellate authority on this point cannot be said to be illegal, improper or irregular warranting interference by this court in revision under Section 20 of the Act. So, the revision petition fails.

5. Learned counsel for the petitioner prayed for some time to vacate the premises. We heard learned counsel for the respondent also on the prayer. Having regard to the facts of the case, the petitioner is given three months' time from today to vacate the premises, on condition that he files an unconditional undertaking in the form of an affidavit before the execution

court agreeing to vacate the premises within three months from today. He shall also pay the arrears of rent, if any, and pay the monthly rent till the room is vacated. The affidavit containing the above undertaking, shall be filed before the execution court within three weeks from today.

The revision petition is dismissed subject to the above observations.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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